Islamic Law

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Introduction

Today, in almost every country, when non-Muslims living alongside Muslims hear a call to enforce Islamic law in their land, one objection or another comes readily to their lips. They ask: does a law many centuries old still hold enough substance to meet the needs of a modern age and a modern state? Was a law made for a particular period ever meant to remain fixed for all time, and shall the punishments of an earlier age now be poured out again on the necks of people living in a wholly different era? Will our courts once again become breeding-grounds of harshness, and shall we, after so long, go back to being slaves in our own courts? And even if that is accepted, whose school of Muslim jurisprudence will actually be enforced as 'the' Islamic law, given that Muslims themselves are divided into many schools? And how will the non-Muslims who live among us — sizeable in number and possessed of wealth, honour and a religion and a language of their own — ever be persuaded to submit to a religious law which is not even their own, phrased in a tongue that is not their own, but is instead the elevated religious language of their Muslim compatriots?

This complaint is not without cause. The people who raise these objections do so, in the main, because they have looked at the matter only superficially — they have never examined it fully and carefully in all its dimensions, and that is precisely why every one of their confusions seems, to them, so serious.

It should be plainly stated at the outset that the law we are discussing here is not a law of the state in the sense of a purely secular, territorial code; it is a personal law which, wherever personal matters are concerned, every Muslim by virtue of being a Muslim already regards as his own law and already acts upon. Long before any modern state came into being, Islam had placed this obligation upon its adherents, and it is in fact Islam itself that first taught the world the distinction between the law of the state and the personal law of the individual — the principle that the personal affairs of people belonging to different faiths within the population of any state should be governed by the personal laws proper to each of those groups. Accordingly, no non-Muslim minority need feel any anxiety on this account: we are not asking that our old religious laws be imposed upon them against their will, in violation of the very

principle that Islam itself established, and about which Islam has given completely clear rulings on the matter.

The only question that genuinely remains, then, is: shall the law that governs this land in personal matters be our own law? Honestly speaking, there can be no answer to this question except that it must indeed be our own law — the very law by whose right guidance we have lived our entire lives, and it is by this same law's standard that Muslims of every walk of life all over the world have long wished to conduct their affairs. For those of us who have laboured and struggled to attain this land at the cost of the lives, wealth, honour and faith of countless Muslims, no charge of the tyranny of a majority over a minority can lie, if the majority in this country asks that the law of the land be its own law, and if a minority group cannot bring itself to agree to that.

Yet even after all this is granted, there remains a real question, and it is one that goes deeper than mere prejudicial faultfinding: what, in point of practical fact, are the difficulties in enforcing Islamic law here, and now, in this country, and what is the true nature of those difficulties? Only once we understand this can we know how, and by what road, this task can actually be carried out.

Enforcing Islamic law is not, in itself, a task fraught with any real intellectual difficulty. The genuine difficulty is that the intellectual, mental and administrative preparation needed for such a task is not yet present among us; nor do we yet have among us a body of workers, trained and disciplined for this specific labour, who are ready and equipped for it. Because we lack this preparedness and this readiness, various people advance various theories as to how it might best be brought about, arguing over how correctly to interpret the injunctions of this law, its underlying spirit, its temperament, its purpose, its principles, and how it might apply itself to the countless new circumstances thrown up by our own age; and there is no final, settled, decisive answer to any of these questions, and it is this very unsettledness that leaves so much room, even today, for people to keep entering by any number of doors they like.

The truth is that as long as the practical difficulties of enforcing Islamic law remain unaddressed, no amount of clever rhetoric or forceful argument will be enough to make this

scheme workable in reality. Rather, the true test of one's sincerity and grasp lies in understanding society's own effort to build itself upon this scheme in life, in every one of its many branches, and in every relevant matter concerned with that effort. It is for this reason that Islamic law is itself only a part — one element — of a wider organic scheme meant for the whole of life, and no correct opinion about it can be formed at all without an understanding of the temperament of the entire scheme of which it forms a part.

The Mutual Relationship Between Law and the System of Life

By the word 'law' we mean that thing by which we express the human way of acting, whether individual or collective, that ought to be followed. The real answer to this question lies in the far wider question of what human life, individual and collective, ought to look like. Answers to this wider question come from every direction, and it is under this heading that many different categories fall. One such category is our body of moral education and training, which includes an effort to shape and mould the character of individuals in accordance with certain values. Another category is that body of collective ordering that governs the network of human relationships within a society, according to that society's own outlook. A third category — the economic system — regulates people's rights over wealth, its production, its distribution, and its exchange. It is out of a great many such categories that most of our life's various sectors take their form and their regulating principles and laws; among these very numerous categories, only some are given the shape of positive, enforceable law, the kind that requires the machinery of political authority to be put into force.

It should now be sufficiently clear to anyone that no one can understand any law properly if he confines his enquiry only to the narrow scope that the word 'law' covers. Rather, one must understand the whole scheme of a society's outlook on life, of which that law is but one part, and no correct opinion about any of its many facets can be reached without understanding the temperament of the entire scheme to which it belongs.

The Intellectual and Moral Foundations of the System of Life

Once we come to the wider question of what the whole system of life ought to be, the real answer to it is: whatever conception a person or a nation forms about the reality of human life and the universe, and whatever standpoint it adopts on the true and the false, the right and the wrong, in that light — it is from that very conception, that very standpoint, that the rest follows, and it is by this that the nature of each nation's ideas is fixed. Different nations of the world have adopted different such conceptions, and the differences among the laws and systems of the world today are, at root, simply a reflection of the differences among these underlying conceptions. It is these conceptions that give rise to differing schemes of life; and it is these very differing schemes that beget different codes of law suited to each scheme. No fixed and final judgement about the law belonging to any given scheme of life can therefore be made without also examining the source from which its scheme is drawn, and the underlying conception and outlook from which it arises. Given this, my subject today obliges me first to give you a general account of the intellectual and moral foundations of Islam's own scheme of life, and only then to move on to a discussion of the legal part of that scheme in particular.

The Source of the Islamic Scheme of Life

Islam derives the scheme of life that it presents from a source it calls, in various editions and versions, by different names in different languages of the world — but the substance of them all is one and the same, and the book itself calls itself 'The Book'. This one Book has, throughout history, been attributed under different names to different peoples who received it, though in reality they are, each of them, differing forms of essentially one single revealed source, corrupted or altered over time in the hands of the differing communities that transmitted it. It is from this source — this scripture and this Messenger — that Islam derives its entire scheme of life.

Islam's Conception of Life

This Book and this Messenger present before human beings, as an established truth to be accepted, a grand vision: that this entire system of the universe, running as an ordered kingdom under one central authority, is under the sovereignty of a single God, who is the Creator of this

universe, and who is also its Owner, and it is by His command that this earth on which we live continues to turn. This vast dominion, with its countless provinces and its vast population, has, out of that population, appointed one small portion — the human race, together with humanity's mind and its physical faculties — as His own subjects, born into His kingdom (a 'born subject'); you were never your own creator, nor are you your own master; you are His creation, and it is He who has raised you and is raising you now, so that you might live and serve Him. For this you have been given, in your own reasoning capacity, a certain sense of your own authority, but this is a false conceit, for that authority is but a small part granted to you, delegated, out of God's own vast, all-encompassing dominion over a very great share of the working of your own life and over many things besides. This authority is used by all of God's subjects everywhere; it is used within every state that belongs to God; and it is used, always, within the universe that belongs to God alone, and in the demands of the harmony of human life. Freedom in the absolute sense — the freedom of an original, self-existing being, unaccountable to any authority above him, unrestrained by any law of nature — cannot possibly belong to any subject, however powerful, until the very last moment of his final reckoning. And having reached this understanding, human beings' scope of choice within their own portion of freedom of action, and their power to select the practical course of their conduct within that scope, is no small thing. If exercised well, it can bring great gain; if exercised wrongly, it can also do the very great harm that spreads, from misusing one man's freedom of will, deep into a whole nation's life and history.

The Basic Conception of Right

It is from here that the question of 'right' first arises — and it is here that we find the earliest, and the most basic, of all conceptions of right: that whatever exists in this universe, and whatever it possesses of the fruits of its exertion, belongs, ultimately, to no one but God, its true Owner, and to Him alone. Every so-called right of ownership that any individual, small group, or nation is granted over any share of it is, in fact, simply a right delegated by God — never an independently, absolutely possessed right. Everyone who exercises any such right is exercising it as a trustee, before Him who is the true Owner of that country, of that world, and

of the entire universe. The demand of the balance between the exercised and the unexercised portions of human authority is, in fact, the very demand of our own life's own harmony: the demand that in human life, both the exercised and the unexercised authority remain in the hands of one and the same Judge, one and the same Ruler, over both spheres — for it is precisely out of the opposing pull of these two different, separately-derived authorities that the very corruption is born which shows itself in the corrupted life of an individual and, spreading further, becomes the very corruption that engulfs entire nations, ultimately manifesting itself in the enormous corruption and disorder that fills the history of the world.

The Meaning of 'Islam' and 'Muslim'

'The Book' and 'the Messenger' lay this truth before human beings, and along with it a call: whoever accepts this truth with a happy and willing heart, without any coercion, has by so doing granted the human race the very freedom of will that it needs in order that a person, in this domain of his life, should himself choose to hand over his authority to his true God, and by that very handing over acknowledge God's ownership, out of his own free will rather than under any compulsion — this handing-over, this submission, is what is called 'Surrender', and this very submission is named Islam. And the act of that submission — done in practice — is what makes a man a 'Muslim', meaning, quite simply, a person of that description who has recognised the ownership of God, has accepted that his freedom of will and his authority over his own affairs belong, ultimately, to God, and has thereby made it necessary upon himself to bring his own life's system into conformity with the commands of God.

The Reality of Muslim Society

Once such people, one and all, accept this reality and, acting on this acceptance, come together in gathering and in fellowship, a 'Muslim society' comes into being — an organised society. This society is unlike ordinary societies of the world in one basic respect: it is not made up merely by accident of birth or common circumstance, but comes into being deliberately, through the formation of a conscious contract between the members entering it. Through this contract's process, the members of this organisation acknowledge — in a conscious, deliberate act — that

God is their true Ruler, that His guidance is their guide, that the law He has revealed for their lives is the constitution of their life, and it is by this law that they will now be governed as its subjects; they undertake, further, that whatever He has declared forbidden they will regard as forbidden, and whatever He has declared to be right and correct they will accept and acknowledge, and will submit their own view or judgement to His command, and not the reverse.

This clear, explicit acknowledgement is the foundational article by which a society becomes what is called 'Islamic society' — the Book and the Messenger have given it a regulatory framework for life, which is called 'Shariah' (Islamic Law), and it is by virtue of this same acknowledgement of that Society, arising from this very Book and this Messenger, that its obligation to give practical effect to this Shariah, in every matter of its life, becomes binding upon it. It should not be at all difficult to understand from this that no explicit statement about any given matter is ever needed from the lawgiver to establish that it is disliked, distasteful, or disapproved of on the part of the Shariah — merely knowing which category of behaviour a given matter falls into is, in itself, easily enough understood by anyone who possesses even a modest degree of understanding. Some kinds of dislikable behaviour verge close to the forbidden, and some kinds of the permissible verge close to being merely undesirable, and there are gradations of proximity between them. Some things have been strictly prohibited outright, and some merely discouraged, and it is this system of ordering that Shariah has laid down for the purpose of restraining people, so that a good society's own worthy elements might themselves take the lead in restraining what is undesirable.

The Comprehensive Reach of Shariah

The commands relating to what is recognised as good and what is disapproved reach into every corner of both the individual and the collective life of every member of this society — into a person's private acts of worship, personal conduct and habits, eating and dress, sitting and rising and social manners, married life, family life, the conduct of daily affairs, economic dealings, mutual social relationships, matters of the state's administration, the requirements and rights of citizenship, the establishment of a just political order, the way of dealing with

other nations in peace and in war, and there is scarcely any branch of life this Shariah has left untouched. It has been given the task, in effect, of laying out the entire complexion of an ordered scheme for the whole of human life — a scheme meant to distinguish the boundaries and characteristics of this particular civilisation quite clearly from all others, in every one of its principles, methods, and manners, and to show, along the straight and pure path it prescribes, how good and evil are distinguished from one another; what freedoms our conduct is entitled to within its bounds, and within what limits our own conduct's freedom must remain restrained and disciplined, and by what conscious, deliberate exercise of our own free will we ought to fulfil it.

The Indivisibility of the System of Shariah

This entire scheme of life which the Shariah presents is, in fact, one single unified whole, with one overarching temperament running through it; you cannot pick and choose parts of it that suit you while discarding others, since it does not consist of a heap of separate, self-standing elements. Rather, it is more like a living organism, one that possesses an inner, organic unity of its own, and the individual members of that organism cannot be regarded as capable of independent existence apart from the whole, nor is any single element of such a civilisation capable of change or amendment on its own, in isolation, without the reality of that civilisation being altered as a whole, and without its very identity being reshaped into something else at every stage.

Beyond this, a fair-minded person who studies the details of these injunctions, principles and limits, and reaches a reasonable conclusion, will find that there is nowhere in it a command issued by Shariah without reason, nor a prohibition laid down without cause; wherever Shariah blocks a course of action, it does so because human strength of intellect and will can, in that particular matter, be led astray by what is commonly known as 'temptation'. Such circumstances are ones in which Shariah lays down a clear, deliberate command or lays down a clear, principled prohibition — signposts, as it were — to keep people from straying, so that it becomes clear which way the correct path lies. These signposts are not obstacles meant to hold

back our onward progress — rather, they are there to keep our path straight and to guide the journey of our life safely along it, protecting it from wandering astray on either side.

These independent laws are a most authoritative part of this scheme — a scheme regarding which, up to the present day, the world's critics have merely raised superficial objections without carrying out any deep, careful study; and only when today's objectors truly investigate and study its principles with a genuine spirit of enquiry will they arrive at how the divorce laws of marriage and inheritance law, for instance, actually reflect the practical requirements of daily life.

The Legal Portion of Shariah

In this discussion it is necessary to clarify that the portion of law which, in modern terminology, we refer to as 'Shariah', is only one part — one component — of a complete and comprehensive scheme for life; every single part, whether or not it is applied or given legal force, is not something that can be separated out and understood on its own, in isolation. Whether or not this particular part of Islamic law has ever actually been enforced anywhere is a matter that can only be properly determined by careful reference to history, and only such a determination — reached in this way — as to when Islam's true intent and full comprehensive scheme of life were actually given practical effect, in accordance with its own original spirit, can tell us the truth of the matter. Insofar as the collective enforcement of Islamic law is concerned, this can only properly be carried out through the medium of a state's own political authority, since a state's political authority alone can properly reflect the temperament of the Shariah when it comes to matters of implementation and administration. It is for this reason that we here call only this particular part of the Shariah, meant for enforcement through the state's political authority, by the name 'Law of Islam' — that is, the part of it that requires a political authority as its vehicle in order to be enforced, and that must be brought into conformity with its own principles and temperament.

Important Branches of Islamic Law

For the formation of this political authority, the very first requirement is a constitutional law, and the Shariah has, on this subject, laid down all the fundamental principles that are needed. What is a state's basic philosophy? For what purpose does a state come into existence? Who are its citizens, and what are their rights and obligations? What rights does a person acquire, on what basis, as a citizen, and can those rights be taken away, and on what basis? What rights and obligations does an Islamic state grant to the non-Muslim citizens (dhimmis) living within it?

The state's law and its authorities' powers have been derived from the Shariah; how much of that authority does the government exercise in shaping any given administrative structure, and by what principles will it go about that shaping; who will be answerable to whom; who will have the power to make law, and within what bounds; what rights and duties does the judiciary have, and to what extent? Constitutional law provides basic answers to all these fundamental questions. Then, in order that these principles might be applied and given a fuller, more detailed shape appropriate to changing conditions and circumstances, the constitutional law has left the further detailed working-out of them to be determined afresh in every age, in the light of the demands of the time — the constitutional law itself, however, offers no detailed regulations of its own; nor is any single fixed shape for these matters prescribed once and for all, valid without change for every era; nor does the constitutional law grant the state complete, unrestricted freedom to shape detailed regulations in whatever way it wishes, of its own accord, without any framework at all — rather, it grants that the state is free to shape its own detailed regulations within the bounds and limits that Shariah has itself prescribed as principles.

Beyond that, the Shariah has divided the remaining matters of law into two broad categories: what is termed 'Public Law' and what is termed 'Private Law', and it is under these two headings that all the various chapters relating to human affairs and to the establishment of justice fall. Within these two headings the Shariah has given, in some places, extremely detailed rulings and principles, while in others it has provided only broad guiding principles, leaving it to whatever era and whatever society finds itself confronting a given circumstance to apply the

general principle in the manner best suited to that particular time and place, all in keeping with the requirements of justice.

We can also say that wherever the Shariah's own explicit legal requirement for completion of a matter did not exist, it left that matter's regulation, entirely, to be filled by whatever suitable regulations any particular country's own society found appropriate — provided always that those regulations were kept in harmony with the general body of Islam's teachings and principles.

Under this heading fall matters such as marriage and divorce, sale and purchase, lease, guardianship, testimony, acknowledgement, and other such headings; and if these books' materials were to be transferred into Urdu, that alone would be an accomplishment worth having. Doing so calls for considerable, laborious effort, but it is nonetheless necessary, so that the learned scholars best equipped for this field might take up and complete the task.

The Stability of Islamic Law and Its Capacity for Progressive Growth

In closing this brief discussion, it should be made clear that human thought, up to today, has still not fully arrived at how many branches of law there are, nor has any single branch, in any single form or shape, ever succeeded in guiding humanity's affairs the way our own Shariah has been able to guide them. If we examine matters more carefully and give this a fair and detailed review, we will see that in Islamic law there is a portion that is absolutely fixed and unchanging, and there is also a portion that is capable of growth and development to keep pace with the growing needs of every age and every changing circumstance, in whichever manner best serves that purpose.

This law of ours has essentially four component elements:

(1) The definite and explicit injunctions established in the Quran or established through authenticated Hadith, such as the prohibition of usury, interest, and theft, the appointment of an heir's fixed share in inheritance, and the like.

(2) The principles behind rulings established in the Quran and in authenticated Hadith — for instance, the ruling that every kind of property or transaction which involves an unlawful, exploitative transfer of benefit between the parties to a contract without their mutual consent is invalid.

(3) Any inference, analogy (qiyas), independent legal reasoning (ijtihad), or juristic preference (istihsan) upon which the consensus (ijma) of the community — whether the general body of scholars or of the majority of them, in the form of an accepted verdict — of the Muslims of the country in question has come to be generally accepted.

(4) Any application of such a consensus, where a consensual or majority decision has been made by the qualified authorities of the country in question, resolving a given matter.

My proposal is that the first two of these categories — the definite injunctions — should be gathered by a body of expert scholars and organised into a single Code of Rulings. Then, whatever new consensual or majority decisions come into being should, as needed, be added to this book of ours as amendments. If, in this kind of code, the first two categories of ruling form its actual, unamendable core, then the rest of the fiqh books can then serve, in relation to this code, as its authoritative commentary. This would also make it far easier for the courts to interpret and to critique Islamic law, and would make the teaching of this law easier as well.

Objections and Answers

I will now briefly address several objections that are commonly raised in discussions of the Islamic law that Pakistan is contemplating. These objections are, for the most part, entirely unjustified. They arise, in part, because the language in which they are framed obscures matters through needless verbal complication rather than clarifying them; still, I will address the substance of each objection, one by one.

The Charge of Obsolescence

The first objection is that this law, being centuries old, cannot possibly be fully sufficient to meet the requirements of a modern age and of a modern state.

Those who raise this objection appear to me to hold a mistaken assumption: namely, that Islamic law's basic origins and its earliest formulation and codification are entirely unfamiliar to them — they simply have no idea of these things. Indeed, it seems they never considered, before making this remark, that this law's basic ethical foundations and principles were laid down thirteen centuries ago, and it was only afterward that this law was progressively developed as a matter of the community's own considered duty. And it is on exactly this basis that they have formed the impression that if a new state, right now, were to adopt this law as its own, this same nation's wide-ranging future requirements might somehow not be sufficiently met by it. Even people otherwise reasonably well-informed do not necessarily know how the fundamental injunctions and principles that were laid down thirteen centuries ago have, over the intervening centuries and up to the present day, been able to keep meeting the needs of daily life as they have arisen, through interpretation, analogy, independent legal reasoning, and juristic preference on matters within the scope of legitimate discretion.

It is this very mechanism — this law's capacity for growth through interpretation, analogy, and independent legal reasoning within the discretion available to jurists across countries and successive periods — that has allowed a rich and comprehensive body of jurisprudential heritage to accumulate over roughly thirteen centuries, one of enormous breadth and depth, reaching from the era of the Rightly-Guided Caliphs to the age of Abu Yusuf, and it is this same tradition of jurisprudence that has enabled Islamic law's continued development across every era, all the way up to our own. Once again today, in exactly this way, whatever future demands arise in whatever future era, the same mechanism of interpretation, analogy, independent reasoning, and juristic preference is available to be applied afresh according to that era's own needs.

It has never in fact happened, in twelve centuries, that any given age or country ever found this Islamic law an obstacle standing in the way of its own necessary requirements.

It is a fact of history that in the first thirteen centuries of Islam's existence Muslims established one government after another, all administering, more or less, this same consistent system of

Islamic law, progressively expanding and developing it as needed to meet each era's own particular requirements.

The nineteenth century, however, has been a link in a chain that broke this progression: from the beginning of that century's decline right up to the early part of the twentieth century, Islamic law in most Muslim countries, on the whole, ceased to be given practical effect — and today the situation, more than ever before, seems to be one in which a great many people believe that this old repository, so long neglected, has now grown obsolete. It is thought that its practical application to matters arising within our present era's political and administrative reality will require far greater labour and effort than was ever needed by earlier centuries' jurisprudential scholarship, which could develop matters comparatively easily, precisely because they had before them the living, ongoing practice of Islamic law as their working guide. They now need people, drawn from among those who possess real scholarship of Islamic law, who can trace it back through the tradition of centuries and identify how Islamic law has developed and applied itself in every previous age, and who are then in a position to apply it, in exactly the same way, to the requirements of the present age too, exactly as it was so widely and comprehensively applied and developed throughout the many past ages whose history and record we can still look back upon — and there is simply no reasonable basis for doubt about this remaining possible even now.

The Charge of Barbarity

The second objection, most often made using highly emotive and evocative language before large audiences, is the charge that Islamic law contains within it a great many things belonging to the dark, primitive imaginings of centuries long past, things which no civilised or morally progressed people of this era would consider tolerable — for example, cutting off the hand for theft, or stoning to death for certain offences.

Those who raise this objection speak as if the idea of humane civilisation had only just been invented in this very age, as if before now no example of any older, ancient civilisation ever achieved anything comparable to what today's so-called civilised nations have achieved, and as

if punishments of this kind never, in any period, arose anywhere as the outcome of a nation's own considered moral standards, but were instead simply an outburst of a man's cruel, brutal impulse. A person who thinks in this way has clearly never bothered to think through what today's civilised nations' criminal justice systems have actually chosen to do instead, nor asked whether the deterrent effect of those alternatives is really any less brutal than a punishment that ends outright in death. Consider, too, in what environment and atmosphere the crime of rape most often actually occurs, in what climate the seeds of moral corruption most easily flourish — is it in a society that permits exposed, provocative dress and free intermingling in public settings, one filled with countless obscene pictures on billboards and hoardings, in every city and town in ways that are often disgracefully shameless, and where scandalous films with vulgar songs are shown; and where love stories, freed of every restraint of chastity and modesty, are shown everywhere, in every form imaginable, including on the radio, and openly circulate in libraries filled with novels of illicit sexual liaisons? Under such circumstances and such an atmosphere, does it make more sense to punish crimes of adultery and molestation with something less severe than these punishments, or with the harshest punishment appropriate, given that these very crimes have become associated in such a society, in some measure, with people's own moral standards? These punishments are certainly the harshest kind of deterrent — but modern civilised nations have never truly asked themselves whether such deterrents are appropriate to today's moral corruption. They have never truly asked whether these deterrents, and the underlying moral standards that gave rise to them, are more suited to the crimes actually being committed than the far milder deterrents imposed today.

These punishments are indeed severe, but they are meant to be a deterrent, one that serves both moral and social order. For example, some of these punishments are meant to serve as a deterrent against the political authority's own abuse of its economic advantage against the interests of the people over whom it rules — one designed to protect them from acts of oppression, even though the offender himself may be someone acting within his own conscience, and even though those responsible for delivering these punishments carry the burden of applying them justly and fairly. And is there really any reasonable, wise legal expert who could believe that such deterrents serve no purpose at all in the work of upholding justice?

Does not every law, in every legal system in the world, ultimately require a foundation of exactly this same kind of deterrent — that whoever violates the law of the land will face a punishment sufficient to deter that particular crime? Under the circumstances that prevail in this country today, whichever party's real, underlying interest happens to be served, that party will accordingly find some deterrents more agreeable to accept, and others less agreeable, than the deterrent actually and fairly appropriate to a given case.

The Excuse of Differences Among the Schools of Jurisprudence

The third objection commonly raised is that Islam has, over time, split into many sects and schools of jurisprudence, and that if Islamic law is now to be enforced, whichever sect's decisions come to prevail will end up matching that particular sect's own school of jurisprudence rather than being genuinely and universally Islamic.

This is an objection that has, more than any other, given great hope to Islamic law's opponents, hope that they might use it as an excuse to spread doubt and confusion among Muslims themselves about the very question of how Islamic law ought to be understood, so that Muslims themselves are never quite able to arrive at a clear, agreed-upon answer to it. It should be said, though, that in truth there is really no complication here at all, and this has never, over the past twelve centuries, been an obstacle preventing anyone, anywhere, from applying and enforcing Islamic law.

First and foremost, one should bear in mind that Islamic law's fixed, definite injunctions and its foundational principles and limits, which God and His Messenger have laid down, are common to all Muslims of every school of jurisprudence, without exception, right from the very beginning up to the present day. There has never been a single disagreement about these, not now and not before, nor is there today. It is only the various interpretations of certain rulings, and the various applications reached through analogy and independent legal reasoning, that give rise to differences among schools of jurisprudence, and these fall within a scope of legitimate discretion, and within the bounds of interpretation and legal application.

Beyond this, whatever differences do genuinely exist are, in fact, differences of this kind: that no ruling handed down by any scholar of any era, or any interpretation given by any jurist, or any legal opinion or exercise of juristic preference offered by any individual jurist practising his own independent legal reasoning, has ever been treated as having simply invented, on its own authority, a wholly new law — rather, that ruling, in and of itself, was always regarded merely as one scholarly opinion. A law only truly becomes law at the moment there arises a general, or at least a broad majority, agreement (or consensus) about it, one that the general body of people accepts and that then becomes the practical, working rule going forward. This is exactly the reason our own jurists, in their books, when explaining any particular matter, generally record that it rests on consensus (ijma), or majority scholarly agreement, or a broadly-accepted, agreed-upon legal opinion (fatwa) — meaning by this that the position taken is not merely an individual, isolated opinion or a mere personal exercise of legal reasoning, but that it is, instead, a matter on which agreement has genuinely been reached, whether unanimous or by clear majority, and that this agreement has, in effect, become binding as settled law.

This consensus and this majority agreement can themselves also be of two kinds. One kind is where the consensus has stood, essentially, since the very beginning, across the whole community of the faithful — or, in worldwide terms, since the vast majority of the Islamic world came to accept it. The other kind is where such consensus, or a country's Muslim population's majority agreement, comes about at some later point, in a given place, at a given time — and its acceptance by that majority is then simply regarded as having come to be accepted by that majority too.

Now the real question is: what position will the minority, who disagree with the majority, be expected to take? The answer to this is that our jurisprudence permits such a small dissenting minority to continue practising their own school's rulings in their own personal matters, and to demand this right for themselves — but nevertheless, whatever becomes the law of the land, that same law is what will apply generally, and what will, in practice, prevail. Even a devoted follower of a particular school of jurisprudence, one who holds his own opinions with complete personal conviction, has never, in Muslim history, been prepared to say that Islamic law simply

cannot be enforced merely because Muslims today are not unanimous in every legal matter. It would therefore be an absurd, unreasonable thing to say that because Muslims differ on some issues of Islamic law, that this is sufficient reason for the charge of unbelief (kufr) to be levelled at any and all Muslims who follow one school or another over disagreements in matters of legal interpretation within Islam — that would be a wholly baseless thing to claim, however many individuals holding minority views might be found willing to declare it, however inclined any given individual or sect of Muslims might otherwise be to declare their fellow Muslims outside the fold.

The Question of Non-Muslim Minorities

The final objection commonly raised is: this country is not inhabited by Muslims alone; there are also non-Muslim minorities settled here, and how will they ever agree that the religious law of Muslims should be imposed upon them?

The people who raise this objection have really only glanced superficially at this question, without carrying it through fully and completely to its natural conclusion — which is precisely why, once its various threads are properly disentangled, all their confusion sorts itself out.

The plain fact is this: the law that we are discussing here is not a law of the state in the sense of a purely territorial code; it is, rather, a personal law — one that, in matters strictly personal to each person, requires every group belonging to that particular faith to be governed by its own personal law suited to that faith, more so than by any other single fixed rule applied uniformly to all groups in a state whose population consists of people of differing beliefs. This principle Islam laid down as an obligation upon those charged with administering the law long before any modern state ever came into being, and indeed it is Islam itself that first taught this very distinction between the law of the state and personal law, and taught this very principle: that the personal affairs of people belonging to different faiths within any given state's population ought to be governed by the personal law appropriate to each. And so no non-Muslim minority need feel any anxiety on this account: we do not seek that any of our old religious laws be

imposed upon them by force, against their own stated wishes, in violation of this very principle Islam has laid down — a matter on which Islam has given entirely explicit, clear rulings.

The only question that genuinely remains, then, is only this: will the law of this land be its own law?

In fairness, the only honest answer to this question that the demand of justice can give is: it can only be a law of the land, and it must be whatever the majority sincerely believes it should be — a majority holding the strongest conviction in the matter, holding a certain right to demand it. But equally, whether this minority also accepts it, or does not, is a matter that lies within the discretion and judgement of the majority of the people of this land as to how they wish to proceed.

In respect of the parts of the law that are personal, it is not our wish that we impose our own personal-status law upon their personal affairs. But now that we possess the authority to do so, having, of our own labour, earned this land at great cost, we consider ourselves obligated, for the good of our own community, to establish our own law here as our own law of the land. But when it comes to the exercise of our authority, if we sincerely intend, with full understanding, to make the law of this land Islamic law, what solid, cogent basis can there be for our not doing so, out of some misplaced deference to the reaction of a minority not our own, out of a fear of offending them, when we hold the sincere, sound conviction that our own faith demands it of us? Should any minority in the actual, practical world genuinely be granted a right of veto over the majority's own exercise of its rights, simply on the pretext that the majority's own exercise of a right it truly possesses does not sit well with the minority in question? Is there any nation on earth possessed of authority that gives up its own right to enforce what it believes is the correct law, purely so as not to displease a religious minority living within its borders? And if there is not, then why should this one Muslim-majority country be the singular exception, forgoing the enforcement of Islamic law in its own country purely for this reason?

How Islamic Law Can Be Enforced in Pakistan

Before this audience I have earlier delivered a lecture on this very subject in which I addressed what the reality of Islamic law is, what its purpose and spirit are, what its foundational principles are, how it relates to us by virtue of our being Muslims, and why we in our own country wish to enforce it, and I have also touched, in general terms, on the doubts and hesitations people commonly raise about it. My lecture today is meant simply as a brief introductory sequel to that earlier one. Now let us turn to the details of exactly how such a policy of gradual, staged reform ought to be carried out.

A Sudden Revolution Is Neither Possible nor Desirable

In this whole discussion, I want first to clear up a serious misconception that many of the people concerned with the enforcement of Islamic law hold. Many believe that the government of a country that has decided to establish an Islamic government need only decide to enact Islamic law in that country, and the government might then announce that a change of law is to take effect immediately, all at once — repealing all previous laws and enacting the whole of Islamic law in their place at a single stroke. This is entirely mistaken thinking, and it is a mistake found not merely among the common people but even within some rather refined, otherwise educated circles.

Those who hold this idea do not understand that any given country's laws are never simply disconnected from that country's ethical, social, economic and political system as a whole — they understand this not at all. They do not know that a country's whole legal system belongs together with its entire social order, and that unless a whole nation's various collective aspects change together with it, no country's legal system, on its own, can simply be replaced wholesale. Nor do they understand quite how much collective effort, striving, labour and struggle it takes to bring about a transformation in the collective institutions of an entire society, and to establish, upon reasonably solid, sustainable foundations, an entirely new political, ethical, social order in place of a wholly different, previously-existing, un-Islamic one. Those who see this differently, imagining that a wholesale transformation could realistically be brought about within a matter of a few months, simply lack practical insight into how such matters actually work. This is precisely why the transformation of any collective system is best

thought of as an evolving, developing process, and those responsible for guiding this transformation ought to keep before them a clear final goal, but must also be prepared to work steadily toward that goal, gradually, one careful step at a time. Those very people are the ones who then complain and lose patience, having failed themselves to grasp exactly how difficult it is to bring an entire people from the state they inherited from an un-Islamic system over, in an orderly and disciplined way, to a genuinely Islamic system of collective life.

The Example of the Prophetic Era

The best example of this gradual approach is the revolution that the Prophet, peace be upon him, brought about in Arabia. Anyone even slightly familiar with the details of that blessed man's career and mission already knows that he did not, from the very outset, enforce the whole of Islamic law across every sector all at once, as a comprehensive package. Rather, he prepared it gradually, step by step, in a carefully staged order, transforming and replacing the old ways and old customs with new Islamic methods and rulings, gradually, as circumstances and readiness allowed, and always with proper attention to the pace at which people could genuinely absorb such change. He first laid the foundation with the essential concepts and moral principles of Islam, and only then, presenting these before the people, went about calling them to that message and inviting them to accept it. Those who accepted this call and were trained by him formed a body of committed, disciplined people ready to strive for this cause, and it was these very people whose minds and manner of practical conduct became purely and distinctively Islamic in character. It was only when this particular work reached a certain natural stage of completion that the Prophet, peace be upon him, undertook the next steps — that he had, while at Medina, already begun laying the groundwork toward the eventual purpose of establishing precisely this kind of government, a government based purely on Islamic principles, one intended to elevate the life of the country to the true heights that Islam holds up as its purpose. In this same way, through the political and material means and resources available in the state's hands, the Prophet, peace be upon him, continued this work of visible, gradual reform and construction — spreading the message widely, calling people to it, working consciously to build a new social order, developing new institutions of education for a whole

generation coming of age at that time, and, given the demands of their own era, tending especially toward attention to trustworthiness in matters of belief, reforming old customs and old practices in ways of thought, spreading a new Islamic manner of expression, and, in this way, bringing about reforms in a wide array of practical customs, and new manners and etiquette, that gradually, over the course of many different efforts across different aspects of life, became established, until finally, over the span of about ten years, an entire, complete Islamic system of life had been established and enforced across the country.

It only becomes clear from a careful study of the Quran and Hadith how the Prophet, peace be upon him, carried out this task, in what order, and by what gradual, staged method — and this can be clearly seen. Marriage and divorce law was among the first to be established. Inheritance law was enforced within the very first year. The law of criminal justice took a full number of years to be completed. The prohibition of alcohol was, similarly, only fully completed in stages, given over roughly nine years, before its complete legal prohibition was finally issued. Mecca itself was, throughout all this, treated with careful, deliberate handling regarding its social customs, precisely because an Islamic government had not yet even been fully established there. But the country as a whole was gradually reformed in its economic order, until eventually a new fiscal system was laid down. Zakat itself, though referenced in the Quran even earlier, only became a definite, fixed legal obligation in the ninth year. This whole undertaking was, exactly like the construction of any true edifice, one in which the architect had already laid out the general design and plan of the building he wished to construct, and then, step by step, resource by resource, and skilled workman by skilled workman, gathered together in a proper order, and by careful, sustained effort, brought that entire building into being — until, at the very end, the entire building stood complete, in the very shape that had been envisioned for it from the very outset.

The Example of the British Era

There is, quite close to our own time, a parallel example in our own country: when British rule was first established here, the British did not immediately alter the whole legal system that had governed the country under Islamic law, seven or eight centuries in place. Rather, for nearly the

first hundred years of their rule, fiqh law continued to be applied here alongside a whole new system being progressively built up in place of the previous one. History has treated this progressive transition as though it were a natural, continuous chain of development, one whose starting date is not even precisely known — but even after fully achieving political power, it still took the British nearly a century, at every step, to bring about the transformation of the legal system here, in a manner suited to their own way of doing things, expanding and altering it to bring the whole apparatus in line with their own aims. It was not merely by putting pen to paper that this transformation was brought about: our own old system of education, and the practical concerns of daily life bound up with it, over a long period of time, remained deeply connected to older customs and institutions, and these were pushed aside slowly, over a long time, and eventually left to fade into disuse, while newer institutions, fitted to a wholly new legal and administrative structure, were then brought forward to take their place. The old religious institutions were gradually abandoned. Through gradual reform, the influence of these different kinds of changes upon the collective life of this country came about through a great many different sources of influence, spreading their effect over people's collective life in this country in various ways, until eventually the older laws faded into disuse and the newer laws took their place.

Gradualism Is Inevitable

If now we in this country wish once again to enforce Islamic law, we too, exactly like the British government's hundred years of gradual reform, will need to work out afresh, from our own effort, exactly how such a transformation is to be brought about — it simply cannot be accomplished by the stroke of a pen alone. Our own old system of education and its practical bearing on our present-day life have long been disconnected from one another, given how long a period they have remained separate, and this cannot be simply mended overnight.

On the other side, our present system of education has produced individuals who are, in effect, blind and deaf to matters of religion, and among them one can hardly find any individual who has direct, personal familiarity with these matters — because the effects of the neglect of religious education have long remained in force, and our legal storehouse has, because of this

suspended state, remained in abeyance for centuries, its potential going unrealised. It has, in a sense, been left standing behind, even as our own present age's judicial requirements have surged ahead. Preparing people capable of properly meeting the requirements needed for this task will demand a long period of sustained, disciplined effort. And the greater truth, above and beyond all this, is that the old structure of morality, community life, economics, and politics that Islam envisions has, in various ways, already been very substantially altered from its original form. If it were possible simply to change the legal system alone while leaving all these connected structures exactly as they now stand, there would be no negative consequence to worry about — but the truth is that in our present situation the legal system and the social order are, in fact, deeply interconnected and interdependent; and any legal change we bring about, without also bringing about corresponding change in the connected structures of custom, morality, civilisation, economy, and politics, would produce exactly the kind of mismatched result you would get from planting a sapling belonging to one kind of land into soil of an entirely different, unsuited kind, one where the two are simply not compatible with one another.

This is exactly why it would be entirely wrong to imagine that reform and change can simply be carried out all at once, right away, without the gradual staging this task genuinely requires — rather, what we need is for the many, various changes required in law to move forward in careful, deliberate coordination with, and in due proportion to, the corresponding changes required in ethics, education, custom, civilisation, economy, and politics.

A Mistaken Excuse

But those who use this genuinely sound and reasonable principle of gradual reform as an excuse to justify avoiding the correct principle altogether, and to justify entirely turning aside from the task, are, in fact, making an entirely wrong argument in trying to support their case. Such people say things along these lines: our country needs, first of all, to establish a state that is entirely secular — one that has nothing whatsoever to do with religion — the state should simply exist, and only afterward, whenever the surrounding environment becomes favourable to Islam, should Islamic law be enacted, and only then would an Islamic government come to

exist at all. That, they say, would be the only reasonable, non-absurd way of putting the matter. I ask them this: is this the kind of environment that a state without religion, of this kind they describe, could ever prepare on its own? Would the leaders and officials of a purely secular kind, on their own initiative, whole-heartedly devote themselves, wholly and freely, to preparing an environment favourable to building an Islamic system of life? Or is it not, in fact, entirely obvious that a leadership of this kind, entirely secular in outlook, would never sincerely take up the task of preparing the ground and building the materials required for such an Islamic environment at all? These secularised people who wish this miss, in fact, the plain reality that the task of preparing this Islamic environment was never something that could ever simply come about on its own — someone, drawing on the strength and resources and means available to them, has to actually undertake this preparation. And so who, in that secular framework, will have any strength, or any resources or means at all, to bring about a religion-free state's preparation of an Islamic environment during its rule — that same environment which, throughout its entire rule, would in the ordinary course of things be devoted only to the construction and continued development of that same non-Islamic order it had itself established, and which it fully intends to continue developing further?

We have not yet, in the illustrations offered above, presented sufficiently gradual illustrations of the very principle we are here trying to establish. If people would rearrange these matters afresh in their own minds, in a properly ordered way, they would understand this point much better: that building an Islamic system of life through un-Islamic means is, in principle, entirely possible, even though building it that way is only possible by degrees, gradually, over time; the only true difference is that building it gradually in this particular way requires an architect of considerable strength, one who keeps a definite, fixed goal continuously before him, and works consistently toward that goal. In the early years of Islam's own revolution, exactly this kind of task was accomplished: the Prophet, peace be upon him, spent his own early years preparing, through the medium of education and preaching, suitable people fit for this task, changing people's thinking, and, through the government's use of its authority to reorder and discipline society, working to reform and to create afresh the moral and cultural fabric of that society. It was through the use of exactly these same means that, in the early period of British rule in

India, English rulers likewise proceeded to enforce their own un-Islamic system of law across the whole country's system of life, and the very same changes they brought about in this way are, in the end, still the very same category of change we now confront and must address.

The Correct Order of Priorities

I believe, and I hope every reasonable person will agree with me, that in this matter, the goal that we ought first to prioritise is this: since it was in the very name of Islam that Pakistan was demanded, and it was on this very basis that our own state was established, this state — whatever else it may be — is meant to be a state that should be reshaped so that it can serve as an instrument for the building of an Islamic system of life. This is our own state, and it is we who must, of our own national resources and means, hand this task over to no one else, since there is no one else we could rely upon to do this work for us or supply us with the material we need.

This much is correct: that if the very first step on this path toward this building's construction ought to be — as I have already made clear — that we make our own state, still comparatively young among the states that gained independence, into a state built upon Islamic foundations, then that ought to be done by making Muslims of ourselves and of this state, giving it a formal constitutional shape through a duly and properly convened Constituent Assembly, one that makes a formal declaration to this effect:

(1) That in Pakistan, sovereignty belongs to God, and the state is His representative, administering the country on His behalf.

(2) That the state's fundamental constitutional law is the Shariah of God, given to us through His Messenger, Muhammad, peace and blessings be upon him, and that it reaches us through this same channel.

(3) That going forward, all laws contrary to the Shariah will be progressively amended, and no new law contrary to the Shariah shall be enacted going forward.

(4) That the state, in the exercise of its own powers, will not exceed the limits Islam has itself set for it.

This declaration is, in effect, a testimony — one that ought to be made, formally, in the state's own constitutional language, meaning through the medium of a properly constituted Constituent Assembly — proclaiming that our state is a 'Muslim' state. Once this declaration is properly and correctly made, religious scholars will then understand what purpose, and toward what end, they must now direct their own work, and jurists ought to bear this in mind and give it due weight, so that they properly understand for whose benefit, and toward what purpose, they are working. Ordinary people, too — the countless millions who lack the specialised knowledge and understanding of religious scholars — need to know for what purpose and toward what end their votes and their choices ought to be exercised, and between whom they must choose. Voters, ultimately, need lawyers and legal advisers whom they can consult when the time comes, and to whom they can turn for guidance, but among such people no one truly knows, with any degree of certainty, which of the many candidates offering themselves for election are genuinely sincere in this cause, which are self-serving, worldly, and dishonest, and which are the kind of purpose-driven, principled people fit for the task at hand. Up to now, this purpose has never even been placed clearly before them, so that they might properly select those best suited for this task, and it is precisely for this reason that many people are left groping about within their own hearts, hoping to find some path forward. Now, if we truly wish to build an Islamic state upon a proper written constitution, then the very first question people will need answered is this: what kind of system will this constitution establish, and what is it meant to accomplish? People need to know how to select capable, suitable individuals, and by what standard of merit their selection ought to be judged — a matter about which, honestly speaking, no clear, agreed standard yet exists among us.

The Second Step

The second step needed is this: to make this same electorate, that has just chosen a body to draft this new constitution, aware that they must now search out — precisely on the basis of moral standards distinct from mere secular success — the honest, sincere, principled people of

good character fit for this work, and must avoid, and steer their attention away from, those whose morality, mindset and scholarship do not meet the standard needed to work sincerely, in good faith, for the people's own real benefit, in preference to those who will actually devote themselves to that work.

So then, once the state is properly reformed into a Muslim state through this same means, the second step follows: a comprehensive plan for reforming every branch of collective life must be drawn up, and steps must be taken to put it into practice; every means and resource of the state must be used to reshape our system of education. Radio, the press, cinema, letters and correspondence, books — every means and every source of collective influence over the country's capable citizenry ought to be turned toward disseminating the ideas of reform and of a fresh, new Islamic outlook in the domains of society and civilisation, in the fields of literary and artistic creativity, so that a proper foundation might be laid for the moral and cultural transformation society and civilisation require. Volunteer corps, the police, the army, courts, and the executive branch, from the very start, should progressively purge themselves of those elements within their ranks whose habits, corrupt and dishonest by nature, exhibit dishonest and irreligious tendencies, and should instead promote and empower those elements ready to assist in the work of this reform; the economic order, too, needs fundamental, structural change, and toward that end a comprehensive, well-thought-out and gradually implemented plan of traditional, ancient, modern, and Western-influenced foundations needs to be built entirely afresh, in an orderly manner, one built and constructed slowly, patiently, and with sustained effort over a long span of time.

I am fully confident that if a righteous and capable leadership group takes charge of the entire country, and all its resources and the entire machinery of the state, and works consistently, in a properly disciplined, orderly manner, with a clear plan of reform devised by a group of sincere and capable people appointed to positions of leadership, drawn from every walk of this country's national life, that this task can, in a mere ten to fifteen years, entirely transform the entire complexion of this country's collective life — and this outcome will follow certainly and

without exception, precisely because such a transformation would be advanced according to one properly considered, coherent plan, worked steadily forward, step by step, over time.

But if this gradual approach is put off, and if changes are instead made without any proper, coherent plan in mind, or if the process of reform is undertaken carelessly or set aside altogether, then no good outcome will follow — indeed, quite the opposite is likely to occur: because in that condition, both the legal system and the two connected systems it depends upon will remain badly out of balance with one another, and any legal changes made under such conditions will inevitably run into serious mismatches, becoming, in effect, like planting an alien seedling into soil that does not suit it at all, into land where its own temperament finds no natural fit. It is precisely for this reason that reform and change must never be undertaken without any coherent plan at all — rather, we need the legal reforms and changes we seek to bring about to be pursued in careful proportion and balance alongside the corresponding changes needed in ethics, education, custom, civilisation, economics, and politics.

Constructive Work for the Enforcement of Islamic Law

Now let me offer some detail on the specific constructive work needed for this task, on the subject of implementing the country's legal system and enacting Islamic laws — a matter I have already gestured toward, in outline, earlier in this lecture series. Because the work of construction in every sector of collective life takes a long time to accomplish, our old legal system's neglect and its long period of disuse in our own country has left it damaged and, in many places, badly weathered and broken down. But at this present moment I want to devote my remarks specifically to setting out, in sequence, a few proposals directly related to just this one task — that is, to the reform of law and of the judicial system.

The Establishment of a Legal Academy

The first aspect of this task that needs to be undertaken is the establishment of a proper Legal Academy, dedicated to a thorough review of the whole body of jurisprudential knowledge we already possess from our predecessors, before undertaking any further construction upon it — a review that begins by properly identifying which of the books and materials we already

possess are actually necessary, and by carefully establishing, through scholarly rigour, the authenticity of the sources of Islamic jurisprudence that these books contain. This material should not simply be transferred, as-is, into Urdu, but should also be reorganised and reordered, in a manner suited to the demands of our present age, so that its full benefit might genuinely be realised by those who need it.

As you already know, jurisprudence (fiqh) is our own greatest treasury, and its true wealth exists primarily in the Arabic language — but our own educational classes, on the whole, remain unfamiliar with this language, and it is because of this unfamiliarity, and also, in some measure, because of certain unfamiliar historical and sectarian complications, that even a great many otherwise educated people among us harbour quite mistaken assumptions about our own jurisprudential legacy — even going so far, at times, as to believe that most of the differences of legal opinion recorded across the many jurisprudential schools reflect nothing more than petty, self-interested wrangling among rival jurists in a bygone age, differences of no real, practical value at all, and that the honest thing to do would simply be to discard all of this and begin entirely afresh, from scratch, with new ideas of our own choosing.

When these same people finally come to properly study the actual historical facts of the lives of our own early jurists across the last thirteen centuries, they discover a very different truth — that these predecessors never spent their time engaged in trivial, self-interested squabbling at all, but instead, entirely to the contrary, left behind for later generations of Muslims a most valuable inheritance, one that we, in our building work today, ought to use as a strong and solid foundation, and one which, if properly rearranged and reordered, is more than capable of usefully supporting today's requirements, and any additional requirements demanded by our own present age can then be built upon it further. Beyond this, a careful and detailed study of all these principles, injunctions and their limits will lead any fair-minded person to a genuinely reasonable conclusion: that Shariah has never issued any command without good reason, nor imposed any prohibition anywhere without genuine and sufficient cause. Where human strength of intellect and will can go astray, in a given matter, on account of what is popularly called 'temptation', Shariah, in exactly such circumstances, provides clear and explicit signposts

— showing which way lies the correct path, and marking, in this way, the boundaries of what our own free conduct is entitled to, and within what limits our conduct's freedom ought to remain properly restrained.

Beyond a purely intellectual and scholarly command of these principles, ideas and rules, a truly independent body of legally trained authorities is what our age genuinely needs — people capable of applying and interpreting these principles correctly, exercising sound analogy and independent legal reasoning and juristic preference in the correct way, and applying these principles to their own laws in a manner properly suited to the actual demands of daily life encountered by a progressive, developing modern state. Without a proper understanding of the historical development of our own jurisprudential tradition, it will not be possible to know how Islamic law has advanced and progressed throughout history, nor by what method it might best continue to advance in the future; nor will it be possible to know why our jurists were able to draw such a rich, comprehensive body of knowledge together from across the entire, vast repository of Islamic legal thought — nor, indeed, why we today cannot simply do the same thing all over again by beginning our own fresh exercise of independent legal reasoning entirely from scratch, without first drawing on the accumulated benefit of established jurisprudential traditions from across the various established schools of law. For all these reasons, it is essential that a properly constituted, capable body of scholars first undertake, and properly complete, a thorough review of the following necessary works.

Codification of the Rulings

The second important task in this sequence is that a properly constituted body of scholars and jurists, with genuine expertise in the field of law, should undertake the task of codifying the whole body of Islamic legal rulings, in a form suited to the requirements of a modern age, exactly the way modern law codes (CODIFY) do.

Reform of Legal Education

In my earlier remarks I have already made clear that as far as Islamic law is concerned, no ruling attributed to any particular jurist or school of jurisprudence can ever be treated as 'law' in the

strict sense merely because that particular jurist, or particular school, said so — the word 'law' belongs only to certain specific things:

(1) any ruling that God, exalted is He, has given explicitly in the Quran;

(2) any ruling based on a Quranic ruling's own underlying principle, given in more elaborated form, or any ruling independently established through an authenticated hadith of the Prophet, peace and blessings be upon him;

(3) any inference, analogy, independent legal reasoning, juristic preference, or scholarly consensus (whether that of the general body of scholars, or an accepted, agreed-upon legal opinion) on which the vast majority of Muslims in a given country have come to a settled agreement;

(4) any application of such a general principle that has been settled, in a given country, by the general or the majority agreement of the properly qualified authorities of that place, on a given matter requiring resolution.

My proposal, then, is this: that a body of experts in these matters should organise the rulings belonging to these first three categories into the form of an authoritative code (CODE) of rulings, and that any future consensual or majority decisions and agreements that are reached should be added, as amendments, to this same book of ours as they arise. If a codified body of rulings of this kind were prepared, containing all the actual, essential rules of law, then all the rest of our jurisprudential books could then serve as commentary (COMMENTARY) upon this codified law. This would, likewise, make the task of critiquing and interpreting Islamic law in our courts considerably easier, and would make the teaching of this law easier as well.

The third urgent task is that we must, in our own law colleges here, change the previous method of teaching, and put in its place methods of training that will genuinely prepare students of Islamic law with the practical and moral qualities they need for a properly grounded and correct understanding of Islamic law.

At present, the point of view from which our system of legal education proceeds is entirely deficient. As a result of this deficiency, the graduates who emerge from it are lacking not only in true knowledge of Islamic law, but their entire mentality often ends up shaped by patterns of thought that are not Islamic at all, forming within them moral qualities that are simply unsuited to what the task of enforcing genuinely Islamic law requires. If matters continue as they are, we will not be able to produce jurists genuinely fit and equipped to carry out the responsibilities that our own courts, our religious courts, and the offices of mufti and qadi actually require of them.

It is exactly this purpose I want to place before you today, asking other learned people, too, to give their attention to these matters, to offer their own corrections and their own additions, so that together a good, properly workable scheme might be devised.

(1) As a first step toward this reform, it is necessary that going forward, admission to a law college should require some prior familiarity with the Arabic language — enough command of it to properly study the Quran, Hadith, and fiqh. If we genuinely wish, going forward, to make the teaching of Islamic law entirely our own, we will eventually need to transfer all the necessary material and books belonging to this field of learning into Urdu — but the need for a degree of Arabic language proficiency will still remain, even after having done so, because in Islamic jurisprudence no person can gain genuine insight and understanding until he has acquired real, personal familiarity with the delicate nuances of the very language in which the Quran was revealed and in which the traditions of the Prophet, peace be upon him, were spoken.

(2) Along with Arabic, it is also essential that legal education begin, from the very outset, by directly and properly grounding students in the reading of the Quran and the Hadith themselves, so that this entire system of ours might genuinely be understood in the light of its own true religious spirit and temperament, rather than through the mistaken, misguided approach followed by our present schools — where, in many sectarian schools, teachers with narrow jurisprudential outlooks teach only one or two chapters, or merely a large surah or two of the Quran, purely as a matter of formal blessing, and where Hadith is included in the curriculum only in the most superficial, token way. In this way it very often happens that even

our own scholars, upon graduating from these very institutions, remain unfamiliar with the deeper spirit, the various branches and sub-branches, of the Quran's own teaching, and remain unfamiliar, too, with the greater purposes and objectives that Shariah has always kept at the very centre of its concern. It is these very sectarian schools of fiqh that have created a legal mentality relating each particular school's particular branch of law more closely to the specific concerns of that particular fiqh school than to Islam's true objectives, and it is exactly this mentality that has, in our own country, produced sectarian divisiveness, and prejudices of this kind, so severe, that they have prevented Shariah's own most important underlying purposes and objectives from ever being properly attended to at all. It is this very prejudice we now wish to remove.

Reform of the Judicial System

In order for the enforcement of Islamic law to be made genuinely workable, some rather significant changes will also be needed to our judicial system. I will only touch briefly on a few points in this discussion here, but there are certain matters within it that carry particular importance from an Islamic point of view.

Abolition of the Legal Profession

The first reform demanded of the legal profession is, in truth, a matter of ethics more than of technical procedure — a single word could not justify it, in terms of pure legality, any more than it could justify countless other, far worse crimes. From this vantage point, the whole practice of law as a paid profession, insofar as it is contingent on payment for pleading a cause, is itself something no proper standard of Islamic ethics can approve, and the spirit and temperament of Islam is deeply opposed to it.

One might say: what real need is there for the profession of paid legal advocacy in the first place, when a case in a properly Islamic court can and should be decided by a judge who understands the law and grasps the facts and circumstances of the case put before him? In principle this need should not really arise at all — yet a real, practical need does exist, and it is a legitimate one: it can happen that in a given case, the two parties' understanding of the law

differs, or that in a given case one party's presentation is more effective in placing before the court, correctly, the version of the facts most favourable to itself, while the other side does not manage this as well. What is genuinely useful and beneficial is well-informed knowledge based on evidence from both sides, so that the court can reach a correct verdict; but the real question is whether this benefit requires that the entire apparatus of pleading and advocacy be turned into a livelihood, an occupation practiced for a fee. Does today's advocate go about his trade, sitting in the marketplace of his legal knowledge, ready to take up whichever case anyone brings to him, prepared to argue on behalf of whoever hires him for a fee, without so much as pausing to ask, at any point in the whole process, whether the case that has been brought to him is a righteous cause, or an unjust one, invalid, sinful, and criminal — merely because the person retaining him has paid the fee owed and has claimed some right against the other side? He never asks his own conscience whether that claimant deserved to have him take up his cause at all. And is his fee something owed to him regardless of whether his client's case is right or wrong, and regardless of whether he manages to secure, or fails to secure, justice for him? So great is his professional obligation to argue his client's case that it becomes his professional duty to conceal a truth from the court, if it is unfavourable to his client, and to reveal exaggeratedly whatever favours his client. Would that any sober advocate might ask himself: is there any real relation between this legal profession and one's moral conscience? Can a person of true moral conscience, out of a duty owed to justice and to truth, take up the defence of the guilty, and drag the oppressor and the guilty out from under the burden of their own crime? And can a person who does this while consuming his fee bear the weight of the offence that this places upon him, and remain untroubled by it? These are the very questions people ask when leading, prominent lawyers of our time enter public life; it is then that we see how their own conduct there, in fact, mirrors this very same character — the same character they had already displayed in the pursuit of their profession.

This is a matter that anyone who understands the spirit and temperament of Islam in this field will find is entirely inconsistent with the disciplined, principled ethical culture Islam has cultivated over the past twelve centuries or so. Very few of our jurists have shown any real

inclination to fully revive the old system of appointing an independent mufti in every town, one who freely, without fee, offered free and independent counsel to whoever needed it.

It is a stronger requirement of our present age, however — since today's affairs of daily life and specialisation in commerce and industry have created a need for expert counsel in every branch and area of law, quite apart from the state's own official machinery — for specialists in law to be officially appointed, drawn from among the most capable people available, salaried, so that any reasonable person from either party to a case can go to them, seek their professional counsel, and receive assistance in preparing their case in the proper form. The counsel these officials give need not be treated by the court hearing the case as binding — nor is there any explicit reason, of a genuinely religious character, that this arrangement should be preferred over any other suitable method, provided such an official body performs this task honestly and impartially and gives sound legal advice. What matters is that the parties in a case, and their counsel, do not have any real interest, financial or otherwise, in a dishonest, deceptive presentation of the facts that would obscure and disserve the requirements of justice.

This raises the practical question of whether experts sufficiently prepared, on this basis, actually exist to establish courts under this scheme — and the honest answer is that at present far too few such people exist, and much time will pass before the requisite number of specialists, in every district, city, and sub-district, can be found, trained, and disciplined for this task. This is exactly why fixed timelines for reasonable transition periods should be given, so that any established lawyer already practising may, if he wishes, transfer, over time, from an unofficial to an official capacity.

Abolition of Court Fees

The reform of the judicial system also requires that Islamic standards of justice be firmly established — so that justice is not made into a shop for selling wares, from which anyone who cannot obtain the necessary funds is deprived of justice, and where anyone facing oppression cannot obtain redress for his wronged rights simply because he lacks the money. We wish to see the day when justice will once again be, as it was in our best periods, entirely free of charge

— a service rendered by an Islamic judicial system for the sake of God alone, not merely a commercial transaction, but treated as an act of worship and, indeed, as a form of service in itself.

You may well ask: from where will the funds come to cover the resulting cost, once the current system of collecting court fees is abolished? This is a valid, and indeed an important, practical question, deserving a serious and careful answer, and one deserving a properly worked-out scheme drawn up by experts in the field.

Conclusion

These are a few proposals which, to my own mind, seem necessary and workable for making the enforcement of Islamic law in this country a reality, put into practice. I hope that the learned people and legal experts present here who take a practical interest in matters of the judicial system and of law will give these proposals due consideration and will bring them to full completion. I understand that not everyone present here will necessarily be fully satisfied with everything I have proposed, and I fully accept that some may feel that this proposal cannot possibly work, or that it is not truly workable in practice, but as I have already stated at the outset, my purpose here today was simply to raise this subject, and to make clear that this reform, and the intention and determination it requires, and the practical resources and means available to carry it forward, do exist, and that with them, whatever is genuinely required for this construction can, in fact, be achieved. Whatever things people wish to see reach fulfilment, and however far they wish to see them carried, in this world, all of this — indeed, everything — can, in fact, be built, whether it is a mosque or a temple.